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| 09/686,073 | 10/11/2000 | David Traynor | 2043.165US1 | 5507 |

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| EXAMINER | |
| COLBERT, ELLA | |

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| ART UNIT | PAPER NUMBER |
| 3694 | |

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| NOTIFICATION DATE | DELIVERY MODE |
| 11/05/2007 | ELECTRONIC |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTO@SLWIP.COM

| | | | |
|------------------------------|-----------------|----------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 09/686,073 | TRAYNOR, DAVID | |
| | Examiner | Art Unit | |
| | Ella Colbert | 3694 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4,8-15,32-35,37 and 38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4,8-15,32-35,37 and 38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>7/31/07</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-4, 8-15, 32-35, 37, and 38 are pending. Claims 35, 37, and 38 have been amended and claim 36 has been canceled in this communication filed 7/31/07 entered as Response After Non-Final Action and IDS.
2. The IDS filed 7/31/07 has been considered and entered.
3. The objection to the abstract has been overcome by Applicants' amendment to the abstract and is hereby withdrawn.
4. The objections to Applicant's Specification has been overcome by Applicant's amendments to the Specification and are hereby withdrawn.
5. The objections to claims 35, 37, and 38 have been overcome by Applicant's amendments to claims 35, 37, and 38 and the cancellation of claim 36 and are hereby withdrawn.
6. The 35 USC 112, first rejections for claims 35, 37, and 38 have been overcome by Applicant's amendment to claims 35, 37, and 38 and are hereby withdrawn.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

Art Unit: 3694

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 1-4, 8, 12, 13, 32, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over (US 5,890,138) Godin et al, hereafter Godin in view of Non-Patent Reference Amazon.com, hereafter Amazon.

Claims 1 and 15. Godin discloses, A sales activity feedback method, including: Communicating, via a network information to a user interface, the information pertaining to a plurality of price choices for an item offered in a network based sales system(col. 3, lines 15-48 and fig. 1 (6 & 16)).

Godin failed to disclose, generating a feedback indication for the item, at each of the plurality of price choices, using supply and sales level information generated from the actions of other users of the network based sales system. Amazon discloses , generating a feedback indication for the item, at each of the plurality of price choices,

Art Unit: 3694

using supply and sales level information generated from the actions of other users of the network based sales system (pages 1-5). Godin discloses, communicating, via the network, the feedback indication to the user interface and this claim limitation is obvious in Amazon. It would have been obvious to one having ordinary skill in the art to modify in Godin as taught by Amazon to allow Godin to give either positive or negative feedback about the price of an item.

Claims 2 and 32. Godin failed to disclose, The method of claim 1 wherein the conveying includes displaying the feedback indication in the sales screen. Amazon discloses, wherein the conveying includes displaying the feedback indication in the sales screen (page 1). It would have been obvious to one having ordinary skill in the art to modify Godin as taught by Amazon to allow Godin to give either positive or negative feedback about the price of an item.

Claims 3 and 12. Godin discloses, The method of claim 2 wherein the conveying includes displaying the feedback indication in the form of one of a series of different pictorial icons (col. 5, line 8- col.8, line 55 and Fig.'s 7-12).

Claims 4 and 33. Godin discloses, The method of claim 1 wherein the feedback indication is associated with one or more factors selected from a group including quantities of the item sold, quantities of the item reserved at future price points, quantities of the item for which a reminder request has been entered, and the time duration incurred to sell the item (col. 2, lines 33-47 and col. 5, lines 16-40). Amazon also discloses price points and quantities of an item.

Claims 8 and 13. Godin discloses, The method of claim 1 wherein the converting is performed continuously in near real time (col. 3, lines 65-66 and col. 7, lines 45-55).

10. Claims 9, 10, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over (US 5,890,138) Godin et al, hereafter Godin in view of Non-Patent Reference Amazon.com, hereafter Amazon and further in view of (US 5,835,896) Fisher et al, hereafter Fisher.

Claims 9 and 14. Godin and Amazon failed to disclose, The method of claim 1 wherein the presenting includes presenting time-separated price choices from a falling-price schedule. Fisher discloses, The method of claim 1 wherein the presenting includes presenting time-separated price choices from a falling-price schedule (col. 7, lines 42-65 and Fig. 2). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Godin and Amazon as taught by Fisher to allow Godin and Amazon to know when to purchase the item of interest at the lowest price.

Claim 10. Godin and Amazon failed to disclose, The method of claim 1 wherein the communication of information includes communicating information causing the user interface to display a present price, at least one future price, a present purchase control button next to the present price and a future purchase control button next to the at least one future price. Fisher discloses, The method of claim 1 wherein the communication of information includes communicating information causing the user interface to display a present price, at least one future price, a present purchase control button next to the present price and a future purchase control button next to the at least one future price (col. 7, lines 42-65 and Fig. 2). It would have been obvious to one having ordinary skill

Art Unit: 3694

in the art at the time the invention was made to modify Godin and Amazon as taught by Fisher for a user to have the capability to decide on which price the user wants to purchase the item.

11. Claims 11 and 34, 35, 37 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over (US 5,835,896) Fisher et al, hereafter Fisher in view of Amazon.com, hereafter Amazon.

Claim 11. Fisher discloses, A user interface of a network based sales system, the user interface to communicate with a sales server via a network, the user interface including: an item identification area responsive to the sales server via the network and to display information pertaining to a plurality of price choices of a selected item (col. 7, lines 42-65 and Fig. 2); and a plurality of price choice selection controls for the selected item displayed in the item identification area to provide communication of a user selection to the sales server via the network, the plurality of price choice selection controls selectively corresponding to the plurality of price choices (col. 7, lines 41-49 and Fig's 2 and 3). Fisher failed to disclose, a feedback indication area responsive to the sales server via the network the feedback indication area operative to display a feedback indication associated with the plurality of price choices pertaining to the selected item, the plurality of price choices being derived from a quantity of the item available and sales of the item within the network based sales system. Amazon discloses, a feedback indication area responsive to the sales server via the network the feedback indication area operative to display a feedback indication associated with the plurality of price

Art Unit: 3694

choices pertaining to the selected item, the plurality of price choices being derived from a quantity of the item available and sales of the item within the network based sales system (Pages 1-6). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Fisher as taught by Amazon to allow Fisher to give either positive or negative feedback about the price of an item.

Claim 34. Fisher discloses, user interface of claim 11, wherein at least one attribute of a price choice selection control of the plurality of price choice selection controls is operative to change during an offering of an item identified in the item identification area (col. 7, lines 8-49).

Claim 35. Fisher discloses, A method including: generating sales information for an item at each of a plurality of sales price levels (col. 7, lines 41-49 and Fig. 2); and communicating the plurality of sales price levels in association with the generated sales information to a user (col. 8, lines 15-29).

Claim 37. This dependent claim is rejected for the similar rationale as given above for claim 35.

Claim 38. This dependent claim is rejected for the similar rationale as given above for claims 35 and 37.

Response to Arguments

12. Applicant's arguments filed 7/31/07 have been fully considered but they are not persuasive.

Issue no. 1: Applicant argues: Godin does not disclose information pertaining to a plurality of price choices and communicating, via a network information to a user

interface the information pertaining to a plurality of price choices for an item in claim 1.

The Office Action admits Godin fails to disclose generating a feedback indication for the item at each of the plurality of price choices using supply and sales level information generated from the actions of other users of the network based sales system and none the less, Amazon does not generate a feedback indication for the item at each of the price choices using supply and sales level information generated from the actions of other users or generating a feedback indication for the item at each of the plurality of price choices using supply and sales level information generated from the actions of other users of the network based sales system as recited in claim 1 has been considered but is not persuasive. Response: On pages 2-7 of Amazon.com show price choices using supply and sales information in addition to feedback from a user. Therefore, it is interpreted that Amazon.com does disclose the claim limitations in the rejection that are rejected using Amazon.com as a reference.

Issue no. 2: Applicant Argues: Claim 11 recites the user interface including an item identification area responsive to the sales server via the network and to display information pertaining to a plurality of price choices of a selected item has been considered but is not persuasive. Response: the user interface including: is part of the preamble. In response to applicant's arguments, the recitation the user interface including: has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the

Art Unit: 3694

process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Issue no. 3: Applicant Argues: Fisher and Amazon fail to disclose the recited amended limitations of claim 35 which were now cancelled claim 36 and claim 37 which was not addressed by the Office Action was not found in any passage in Fisher or Amazon has been considered but is not persuasive. Response: In an auction a user can request to be alerted when the item reaches a price selected by a user and communicate a reminder message to the user to purchase the item.

In the interest of trying to address all of Applicant's relevant arguments the Examiner may not have addressed every argument made in this response. However, any omission of responding to any argument was in error.

Conclusion: In this rejection of claim 1 and others, for example under Section 103 (a) of Title 35 of the United States Code, the Examiner carefully drew up a correspondence between the Applicants' claimed limitations and one or more referenced passages in the Godin, Fisher, and Amazon references, what is well known in the art, and what is known to one having ordinary skill in the art (the skilled artisan). The Examiner is entitled to give claim limitations their broadest reasonable interpretation in light of the Specification (see below):

2111 Claim Interpretation; Broadest Reasonable Interpretation [R-1]

>CLAIMS MUST BE GIVEN THEIR BROADEST REASONABLE INTERPRETATION

During patent examination, the pending claims must be "given the broadest reasonable interpretation consistent with the specification." Applicant always has the

Art Unit: 3694

opportunity to amend the claims during prosecution and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. In re Prater, 162 USPQ 541,550-51 (CCPA 1969).<

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Inquiries


13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ella Colbert whose telephone number is 571-272-6741. The examiner can normally be reached on Monday, Wednesday, and Thursday, 5:30AM-3:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on 571-272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3694

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

October 29, 2007


ELLA COLBERT
PRIMARY EXAMINER